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No. 07-56

IN THE

Supreme Court of the United States

ESTATE OF MARY LOWE, BY ROBERT F. HARRIS,
COOK COUNTY PUBLIC GUARDIAN AND
SUPERVISED ADMINISTRATOR,
Petitioner,

v.

APEX TAX INVESTMENTS, INC. AND JOHN HERNDON,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

MOTIONS FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* AND BRIEF OF *AMICI CURIAE* IN SUPPORT OF THE PETITIONER

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August 17, 2007

No. 07-56

In the
Supreme Court of the United States

ESTATE OF MARY LOWE, BY ROBERT F. HARRIS, COOK COUNTY PUBLIC GUARDIAN AND SUPERVISED ADMINISTRATOR,
Petitioner,

v.

APEX TAX INVESTMENTS, INC., AND JOHN HERNDON,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

Motion of the Sargent Shriver National Center on Poverty Law, the Legal Assistance Foundation of Metropolitan Chicago, and the Lincoln Legal Foundation for Leave to File Amicus Brief in Support of Petition for Writ of Certiorari

The Sargent Shriver National Center on Poverty Law, the Legal Assistance Foundation of Metropolitan Chicago, and the Lincoln Legal Foundation move, pursuant to United States Supreme Court Rule 37, for leave to file an amicus brief in support of the petition for writ of certiorari filed by the Estate of Mary Lowe in the above-referenced case on July 13, 2007.

In support of this motion, movants state as follows:

1. Movants sought consent to the filing of this amicus brief from all parties
2. Barry Sullivan, attorney for petitioner, consented. Mr. Sullivan's written consent is attached to this motion as Exhibit A.
3. Deborah King, one of the attorneys for John Herndon, consented. Ms. King's written consent is attached to this motion as Exhibit B.
4. Denise Brewer, one of the attorneys for respondent John Herndon, has not responded to movants' request for consent to the filing of this amicus brief.
5. Jonathan Smith, attorney for respondent Apex Tax Investments, Inc., has not responded to movants' request for consent to the filing of this amicus brief.
6. As more fully set out in the amicus brief, the Sargent Shriver National Center on Poverty Law's interest in this case is that it, as a not-for-profit public interest law office that represent low-income people, it is concerned with the power of government to interfere with property rights and the nature of due process protections.
7. As more fully set out in the amicus brief, the Lincoln Legal Foundation's interest in this case is that, as an all-volunteer public-interest law center, it defends market freedoms and seeks to vindicate rights of individuals to own private property.
8. As more fully set out in the amicus brief, the Legal Assistance Foundation of Metropolitan Chicago's interest in this case is that, as the Midwest's largest provider of free legal services to the poor in civil matters, much of its practice is devoted to saving its client's homes.

Wherefore, the amici curiae respectfully request that the Court grant it leave to file it Brief in Support of Petition for Certiorari instanter.

Respectfully Submitted,

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August 17, 2007

IN THE SUPREME COURT OF THE UNITED STATES

I hereby grant my consent to Sargent Shriver National Center on Poverty Law and Legal Assistance Foundation of Metropolitan Chicago to submit an *amicus curiae* brief on the Petition for a Writ of Certiorari to the Supreme Court of Illinois in the case of:

ESTATE OF MARY LOWE, BY ROBERT F. HARRIS,
COOK COUNTY PUBLIC GUARDIAN AND SUPERVISED ADMINISTRATOR,

Petitioner,

v.

APEX TAX INVESTMENTS, INC. AND JOHN HERNDON,

Respondents.

Signed,

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Exhibit A

In the
Supreme Court of the United States
No. 07-86

Estate of Mary Lowe, by Robert F. Harris, Cook County Public Guardian and Supervised Administrator, Petitioner,

v.

Apex Tax Investments, Inc., and John Herndon, Respondents.

Consent to Filing of Amicus Brief

The undersigned attorney for respondent, John Herndon, consents to the filing of an amicus brief in the United States Supreme Court on behalf of the Sargent Shriver National Center on Poverty Law, the Legal Assistance Foundation of Metropolitan Chicago, and the Lincoln Legal Foundation in support of the petition for writ of certiorari filed by the Estate of Mary Lowe in the above-referenced case on July 13, 2007.

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Exhibit B

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STATEMENT OF INTEREST[1]

Sargent Shriver National Center on Poverty Law The Sargent Shriver National Center on Poverty Law ("Shriver Center") is a not-for-profit public interest law office that represents low-income people without charge in civil matters and uses policy development, advocacy, communications and litigation to fight poverty and improve opportunity. Established in 1967 under the name National Clearinghouse for Legal Services, the Shriver Center has consistently sought to improve the conditions of people in poverty and formulate and advocate for solutions to the conditions that cause and perpetuate poverty. Generally, as part of many of its initiatives, the Shriver Center has been concerned with the power of government to interfere with property rights and the nature of due process protections interposed between those rights and a proposed interference with them.

Specifically, the Shriver Center considers affordable decent housing as a core component of family economic security. It is an important factor in success in school, employability, productivity, and creation of strong communities of opportunity. The Shriver Center has a special project focused on the preservation of affordable housing, has litigated issues of the sufficiency of notices in the context of foreclosures and tax sales, and has had a national project to prevent mortgage foreclosures and save home ownership.

In addition, the Shriver Center has a special project operated within its Community Investment Unit, that is focused on the importance of asset-building in attacking poverty, now and across generations. As co-chair of the

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[1] Counsel for none of the parties authored any part of this amicus brief. No person or entity other than the amici curiae, their members, and counsel, made a monetary contribution to the preparation or submission of the brief.

Illinois Asset Building Group, the Shriver Center is leading an advocacy effort to promote savings and retirement income and home ownership. At the core of these activities is the position that home ownership is one of the most important strategies for economic stability, upward mobility, and transmission of wealth to the next generation. The tax delinquency system is a threat to home ownership and the related asset-building goals, and the Shriver Center has a strong interest in making sure that the system features the strongest possible due process protections, particularly for the low-income, elderly, or infirm populations most exposed to harm.

The Lincoln Legal Foundation The Lincoln Legal Foundation ("LLF") is an all-volunteer public-interest law center that defends market freedoms and seeks to vindicate rights of individuals to own private property. LLF observes that individual and family home-ownership is a crucial means of advancement out of poverty and a bulwark against descent into poverty. LLF is interested, therefore, in ensuring that the authority of governments to seize private homes is highly limited, being permitted only for actual public use or when other circumstances make it truly necessary, and strictly conditioned upon conformity to due process requirements. In the context of real property tax administration, this interest strongly favors imposition upon the tax collector the burden of showing that due process has been accorded, rather than imposing upon the tax payer the burden of showing that due process has been denied.

The Legal Assistance Foundation of Metropolitan Chicago The Legal Assistance Foundation of Metropolitan Chicago (LAF) is the Midwest's largest provider of free legal services to the poor in civil matters. Each year, LAF provides legal advice and representation to over 30,000 people. Much of LAF's practice is devoted to saving our

client's homes. This work is supervised and coordinated by our Home Ownership Preservation Project, which is itself the leading legal advocacy unit on homeownership preservation issues in the Chicago metropolitan area. Through its work of 40 years, LAF is intimately familiar with the many due process issues raised by state action seeking to deprive poor people of their various property rights. Over the past decade our Home Ownership Preservation Project has applied that institutional knowledge and its technical expertise to save hundreds' of clients homes, and to help others (through community education, training, outreach, and policy advocacy) to save thousands more. Through all of its work, LAF is particularly aware of the value of homeownership to low-income families and to urban communities seeking to maintain neighborhood stability.

SUMMARY OF ARGUMENT

In *Apex Tax Investments, Inc. v. Lowe (In re County Collector)*, 867 N.E.2d 941 (Ill. 2007), the Illinois Supreme Court approved the termination of an infirm elderly woman's ownership of her home. In doing so, the *Lowe* decision construed this Court's recent decision in *Jones v. Flowers*, 547 U.S. 220 (2006), so narrowly as to make it inapplicable to any other factual scenario, leaving homeowners throughout Illinois without the benefit of *Jones*.

The tax delinquency system is vulnerable in many ways and rife with errors, with high potential for property owners to unfairly lose their homes and for tax buyers to reap windfalls.

1. Senior citizens are particularly vulnerable to loss of their homes when they do not receive adequate notice of delinquent tax issues.

2. Tax deeds are issued when the delinquent taxes are a tiny fraction of the home's estimated value, underscoring the fairness of fact-specific notice and indicating that notice is often a real chance for even the lowest income property owners to preserve the property.

3. Mortgage companies responsible for paying property taxes as a part of the mortgage agreement sometimes fail to do so, and this underscores the need for adequate notice so that homeowners can correct the mistakes of others.

4. Bureaucratic errors of local taxing bodies put owners at risk of losing their homes for delinquent property taxes, emphasizing the need for great care in providing notice to the homeowners.

5. The death of the original homeowner leaves the heirs and/or relatives in need of careful notice requirements regarding a property tax delinquency.

In Illinois and elsewhere, over the last decade, local governments have increasingly gone to the private sector to assist in the collection of property taxes. Frank S. Alexander, *Tax Liens, Tax Sales, and Due Process*, 75 IND. L. J. 747, 751 (2000). Unlike the government, whose sole interest is the payment of taxes when it holds a tax lien, the private party's interest is in maximizing the return on its investment. *Id.* at 794. *See Slattery v. Friedman*, 636 A. 2d 1, 17-18 (Md. Ct. Spec. App. 1994) (recognizing that "the holder of the certificate of sale has little incentive to locate the owners of the property, and will often benefit if the owners are not located"). Thus, in cases like Ms. Lowe's strict due process principles are needed.

In Cook County, Illinois, alone, a total of 118,423 properties were sold at annual tax sales, and a total of 28,448 were sold at biannual tax scavenger sales, for a total of 146,871 sales, for the period 2000 through 2005. For many thousands of these properties, the sold taxes were not redeemed prior to the point in the process where the tax purchaser had the right to file a petition for a tax deed. For the period 2002 through 2006, tax purchasers filed a total of 30,089 petitions, or 6,017 per year. Finally, though many of these properties were subsequently redeemed, many of them were not. Specifically, for the period January 1, 2003, through July 31, 2007, the Office of the Cook County Clerk reports that 13,758 tax deeds were issued (for an annual average of over 3,000). In each such case title was conveyed to the tax buyer.

When a person's home is at stake, it is not too much to ask that local government and the tax sale industry exert themselves to provide notice calculated to reach the homeowner in the circumstances of each case. The Due Process Clause is a curb on the power of government, requiring a level of care that is respectful of this most important property interest, a person's home. This Court should grant certiorari.

ARGUMENT

I. Without the Court's Intervention, the Ruling in *Lowe v. Apex Tax Investments* Will Result in People Losing Their Homes, When They Could Have Saved Their Homes if There Had Been Adequate Notice.

In *Apex Tax Investments, Inc. v. Lowe (In re County Collector)*, 867 N.E.2d 941 (Ill. 2007), the Illinois Supreme Court approved the termination of an infirm elderly woman's ownership of her home. The court determined that a tax purchaser's provision of notice of its petition for a tax deed satisfied due process, even though the tax purchaser failed to follow-up on new information that it obtained, which informed the tax purchaser that the home owner did not receive notice and provided information about how that owner might be found. In doing so, the *Lowe* decision construed this Court's recent decision in *Jones v. Flowers*, 547 U.S. 220 (2006), so narrowly as to make it inapplicable to any other factual scenario, leaving homeowners throughout Illinois without the benefit of *Jones*.

Jones affirmed the longstanding constitutional principle first articulated in *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306 (1950): the sufficiency of notice to a party regarding an impending threat to ownership of his or her home depends on the surrounding circumstances. Consequently, whether notice of a proceeding satisfies due process is fact-specific. The fact-specific nature of notice requirements protects the most vulnerable in our society, who may be less likely to receive actual notice of proceedings affecting them under formulaic and not fact-specific notice procedures. Without this Court's intervention, the *Lowe* decision will render *Jones*

meaningless, as well as the constitutional protections outlined in *Mullane* and its progeny.

Tax sales and tax deed actions are not trivial events. Rather, they trigger the significant and sometimes irreversible prospect of the loss of a home. *Vosilla v. Rosado,* 944 So. 2d 289, 301 (Fla. 2006). "The right to own property is one of the fundamental rights that a citizen enjoys under our American system of government." *Don. S. Co., Inc. v. Roach*, 285 S.E.2d 491, 495 (W. Va. 1981). While the state has a right to condition the enjoyment of that right upon the payment of taxes, due process requires notice to the landowner before foreclosing on his or her property interest because of allegedly delinquent taxes. *Id.* At play in this case are the fundamental constitutional rights to the preservation of one's property, and to one's very life and liberty. *Malone v. Robinson,* 614 A.2d 33, 35-36 (D.C. 1992). Such vital interests require strict adherence to due process requirements. *Id.*

As is set forth below, the tax delinquency system is vulnerable in many ways and rife with errors. The potential for property owners to experience great loss and for tax buyers to get windfalls underscores the importance of constitutionally sufficient notice in these cases. Due process protections are even more crucial in such cases for vulnerable populations like the elderly, poor, and the physically or mentally ill, who find it much more difficult to diligently protect their property interests than other taxpayers.

A. Property Owners across the Country Are Threatened with the Loss of Their Homes Because They Did Not Receive Proper Notice of Delinquent Property Taxes.

The *Lowe* decision cripples the fundamental due process notice protections that *Jones* affords homeowners.

The parties affected by tax deficiency cases come from all walks of life. In many cases, certain life circumstances have diminished their ability to protect their property interests or have limited their access to notice that their homes are about to be taken. They are senior citizens, who prize their homes as their sanctuary, resting place, and largest investment; or adult children of such senior citizens who struggle to manage their parents' interests, often from afar. They are mentally ill or physically incapacitated individuals, such as Ms. Lowe, who may be unable to appreciate the gravity of their current situation. They are homeowners reasonably relying upon mortgage companies to properly pay their property taxes. And they are all of the property tax payers nationally, at the mercy of a taxing body's bureaucratic errors and snafus.

To demonstrate the wide variety of situations where notice of a tax delinquency is not properly provided, and thus where careful and fact-specific notice requirements are necessary, we present a sampling of cases from across the country:

1. Senior citizens, who have typically satisfied their homes' mortgages, are particularly vulnerable to losing their homes to delinquent property taxes when they do not receive notice:

Nathaniel Kyle: Washington D.C. resident Nathaniel Kyle's story is similar to that of many elderly citizens throughout this country. Mr. Kyle and his wife lived in a modest home in Washington D.C. for half of a century and raised four children there. *See* Mary Beth Sheridan, *Some Seniors Unaware of Risk to Homes; City to Start Auctioning More Than 6,000 Tax-Delinquent Properties Next Week*, WASHINGTON POST, July 11, 2002, at T3. In 1999, shortly after his wife died, Mr. Kyle received a terrible shock: his home had been sold at a city tax sale

several years earlier for less than 10% of its value. *Id.* The city failed to notify Mr. Kyle of the tax sale. *Id.* Mr. Kyle claimed to have diligently paid his taxes, but the local government had no record of that. *Id.* Only with legal assistance was he able to regain possession of his home.

Buck and Robbie Jones: Buck and Robbie Jones, a severely ill elderly couple in Arkansas, never imagined their golden years would be spent trying to save their family home. *See* David Hughes, *Bill Offered to Prevent Sale of Homes Without Notice*, ARKANSAS DEMOCRAT-GAZETTE (Little Rock, Ark.), March 1, 2003 at 17. The couple suffered from debilitating emphysema and stomach cancer. *Id.* The first notice they received of a problem with the property taxes was a letter from the new owner telling them to leave. *Id.* In a federal lawsuit filed in 2003, the couple alleged that the new owner actually intercepted certified mail from the local government notifying them of the delinquencies. *Id.* Regardless, the Arkansas Supreme Court affirmed a January 2002 ruling that state law only requires that the land commissioner notify a delinquent property taxpayer by certified letter even if the person to whom the letter is addressed never receives it. *Jones v. Double "D" Props.*, 98 S.W.3d 405, (Ark., 2003), aff'd 176 Fed. Appx. 401, (2006).

Ruby Benton: Ruby Benton purchased a home in 1967 and lived there for over twenty years. *Benton v. Logan*, 474 S.E.2d 446, 447 (S.C. Ct. App. 1996). In 1990, Ms. Benton was moved to a nursing home. *Id.* at 446. Her grandson forwarded her mail to the nursing home. *Id.* In 1991, a property tax bill, sent to her house, went unpaid. *Id.* at 447. Follow-up certified and registered mail notices of the delinquency were sent to the home. *Id.* All of the notices were returned to the treasurer indicating that either the forwarding order had expired or the mailings were

unclaimed. *Id.* Unlike the Illinois court here, the Arkansas appellate court in Benton affirmed the trial court's decision to void the tax deed, concluding that the returned mails' notation that the forwarding order had expired was a clear indication that someone had moved, and "a more recent and better address" was out there. *Id.* at 448. The court found that due diligence required more action to be to taken. *Id.*

2. In some cases the unpaid property taxes represent a mere fraction of the home's estimated value, underscoring the fairness of fact-specific notice and indicating that notice is often a real chance for even the lowest income property owners to preserve the property:

Kermit Atwood and Dolores Touchstone: Hurricane Katrina was not the only disaster that threatened Kermit Atwood and Dolores Touchstone's Louisiana home. A $1.63 delinquent 1996 property tax bill had been quietly eating away at their ownership of the home. *See* Charlie Chapple, *Fighting for their home; Slidell family's residence was sold at auction because of a $1.63 tax bill they didn't even know about*, TIMES PICAYUNE (New Orleans, La.), July 15, 2007, at 1. The local government had sent out the tiny bill with the wrong address, and that error eventually led to the property being sold at a sheriff's tax sale. *Id.* The family's ordeal finally ended this year, when an anonymous donor settled the lawsuit brought by the tax buyer. *See* Charlie Chapple, *Tax lien nightmare ends in Slidell; Local man pays to settle suit over house*, TIMES PICAYUNE (New Orleans, La.), July 18, 2007, at 1..

Helen McCann: Helen McCann lost her 30-year residence worth $175,000 for $864 in unpaid property taxes. *In re McCann v. Scaduto*, 519 N.E. 2d 309, 311 (N.Y. 1987).

Even though Ms. McCann's name and address were known to the County, efforts were only made to notify her by publication. *Id.* Eventually, Ms. McCann was notified by certified mail, but with only three months left to redeem her property. *Id.*. The Court noted that "substantial interest, penalties and expenses accrue upon [the tax] sale" and that "[t]hese costs cannot be shrugged off as insignificant consequences, particularly for persons such as petitioner McCann subsisting on Social Security payments and a weekend job delivering magazines, and particularly when measured against the negligible cost and burden that would be imposed on the County if it were required to mail a notice to her." *Id.* at 314.

Lois Holdcraft Spencer: Shortly before her death, Mrs. Lois Holdcraft Spencer's property was sold at a tax sale for $12.60. *Spencer v. James*, 955 So. 2d 1287, 1289 (La. Ct. App.. 2007). Prior to the sale, Mrs. Spencer had been in failing health, moved to an assisted living facility, and gave her son responsibility for handling her business affairs. *Id.* Neither Ms. Spencer nor her son received notice of the property tax delinquency. *Id.*

3. Mortgage companies responsible for paying property taxes as a part of the mortgage agreement can contribute to problem of delinquent property taxes and unsuspecting homeowners, and this underscores the need for adequate notice so that homeowners can correct the mistakes of others.

At times, mortgage companies do not pay the property taxes, pay the incorrect amount, pay the taxes for another homeowner, experience backlog, or fail to receive notice themselves of homeowner's property tax obligation. *See* Beth Hahn, *Tax Bills Sent Directly to Owners*,

ALBUQUERQUE JOURNAL, November 9, 2006, at A8; *see also* Lisa W. Foderaro, *Nightmare: Owner Awakes as Tenant*, THE NEW YORK TIMES, February 4, 2000, at B8.

Joseph and Mary Tunstall: Joseph and Mary Tunstall lost their home because their mortgage company, responsible for paying the Tunstall property taxes, failed to pay the taxes in 1966. *Curtis Bldg. Co., Inc. v. Tunstall*, 387 A.2d 1370, 1371 (Pa. Cmmw. Ct. 1978). Through their mortgage company, the Tunstalls had paid all of their property taxes for the years 1961 through 1971, with the exception of 1966. *Id.* A representative of the mortgage company was unable to explain the failure the pay in 1966. *Id.* The house was purchased in a tax sale for $424.00. *Id.*

Marshall and Cindy Parks: The Parkses were shocked when a tax scavenger showed up at their home claiming to own the property. *Parks v. Wells Fargo Home Mortgage Co., f/k/a Norwest Mortgage, Inc.*, 398 F.3d 937, 940 (7th Cir. 2005). The Parkses later learned that although they had made all of their mortgage payments, the mortgage company had failed to pay property taxes on the residence for one month, because it failed to recognize a change in tax identification numbers on their residence. *Id.* at 939-40. As a result, the Parkses became embroiled in a legal battle to save their home. *Id.* at 940.

There are an alarming number of similar cases, where mortgage companies fail to pay property taxes as per their contractual obligations, and homeowners either lose their homes or are dragged into lengthy legal battles. *See, e.g.*, *Choi v. Chase Manhattan Mortgage Co.*, 63 F. Supp. 2d 874 (N.D. Ill. 1999) (finding mortgage company failed to pay property taxes and failed to rectify the delinquency, resulting in tax sale of homeowner's property); *Davis v. Dime Sav. Bank of New York, FSB*, 158 A.D.2d 50 (N.Y.

App. Div. 1990) (finding homeowner's allegations sufficient to state a claim for fraud where mortgagee bank failed to pay property taxes pursuant to escrow arrangement and then misrepresented to homeowner that they had been paid); *Thunderbird Motel Corp. for Review of Real Estate Taxes v. County of Hennepin*, 183 N.W.2d 569 (Minn. 1971) (affirming reinstatement of taxpayer's petition for review of property taxes where mortgagee collected funds from homeowner to pay property taxes, but then failed to pay).

4. Bureaucratic errors of local taxing bodies further put owners at risk of losing their homes for delinquent property taxes, emphasizing the need for great care in providing notice to the homeowners.

Various bureaucratic errors by local taxing bodies have resulted in property owners losing their homes, including sending property tax notices to incorrect addresses.

Julio and Nannette Rosado: Julio and Nannette Rosado moved to a second home in Florida in 1998. *Vosilla*, 944 So. 2d at 291 After they moved, the Rosados twice informed the taxing authorities of their change in address. *Id.* at 300. The Rosados also informed the tax collector that a legally incapacitated relative and non-English speaking caretaker continued to reside at their original home. *Id.* at 291. Nonetheless, the tax assessment roll was not updated to include the new information. *Id.* at 292. Shortly after the Rosados sent their second notice of their change of address, the holder of the tax certificate sought a tax deed to the home pursuant to Florida law and notice of the tax deed petition was sent to the original home address. *Id.* at 292. The property was later sold at a tax deed sale and an

action was brought to quiet title to the property. *Id.* Litigation ensued, and the Florida Supreme Court eventually found in favor of the Rosados. *Id.* at 300-01. Noting the trial court's finding that the Rosados' failure to receive notice was "completely the fault of the taxing agencies," the Florida Supreme Court found that the clerk should have verified that the change of address had been submitted. *Id.* at 300.

The following facts and examples demonstrate the prevalence of bureaucratic errors like that which threatened the Rosado home:

- Jeremiah Davison lost his Chicago, Illinois home in a tax sale. The county government apparently had the wrong address. Consequently, Mr. Davidson did not receive notice of the delinquent taxes in time to save his home. *See* Kristen McQueary, *Fight for house finally ends; Man who never saw notice of taxes loses home*, CHICAGO SUN-TIMES, November 22, 2004, at 10.
- In October 2003, almost 3,000 of the 80,000 property tax bills sent to Santa Fe County, New Mexico residents were returned because of incorrect addresses, especially in rural areas where the routes have changed. *See* Gary E. Salazar, *Property Tax Bills Returned to Sender*, ALBUQUERQUE JOURNAL, November 14, 2003.
- Similarly, almost 25,000 of 822,000 property tax notices sent by the Appraiser's Office in Broward County, Florida were returned as undeliverable, due to incorrect addresses, old addresses, post office errors, or errors in the database. *See* Jennifer Mooney Piedra, *Tax Notices Back in the Mail: About 25,000*

Property Tax Notices Were Returned to the Broward Property Appraiser's Office as Undeliverable, MIAMI HERALD, September 13, 2006.

5. The death of the original homeowner leaves the heirs and/or relatives in need of careful notice requirements regarding a property tax delinquency.

Elliot Malone: After Elliot Malone's parents died in 1976, he became their sole heir and executor. *Malone* 614 A.2d at 35. Mr. Malone paid off the home's mortgage and lived in the house for several years until he decided to move closer to his work. *Id.* After he moved, he continued to stop by his parents' home once a week and receive mail there. *Id.* When Mr. Malone received notice of a registered letter to his parents, he attempted to retrieve it from the post office. *Id.* The post office would not release it to him. *Id.* Mr. Malone believed that he was current on the property taxes for the family home. *Id.* Other registered mail attempts to the owners of the property were returned unclaimed. *Id.* The first notice he received that there was a problem with the property taxes was a copy of a tax deed pinned to the front door. *Id.*

Anna B. Pearson: Anna B. Pearson's grandchildren had to sue the City of Kingsport, Tennessee to regain possession of their grandmother's home. *Freeman v. City of Kingsport*, 926 S.W.2d 247 (Tenn. Ct. App. 1996). The City had sent certified mail notice of a suit for property tax delinquency to their deceased grandmother. *Id.* at 247. When the notice was returned with the notation that owner was deceased, the City provided notice by publication but took no other steps to identify the current property owners. *Id.* A default judgment was entered and the property was

eventually sold for $410, the amount of unpaid property taxes. *Id.* at 247-48. *See also Bryant v. T.C.B. Enterprises*, 395 So. 2d 823, 826 (La. Ct. App. 1981) (Noting that although the tax collector knew that there were several heirs with an ownership interest in the property, but it was their practice to only mail notice of property taxes to the first heir listed on the assessment rolls).

B. The Court Must Be Particularly Vigilant in Protecting the Property Interests of Homeowners When Private, Profit-Motivated Parties Are Notifying Homeowners.

Under the Illinois system, the tax purchasers in this case had a strong financial incentive *not* to locate the homeowner. In order to counteract that incentive such a system must have stringent government-enforced notice requirements to avoid injustice. In Illinois and elsewhere, over the last decade, local governments have increasingly gone to the private sector to assist in the collection of property taxes. Frank S. Alexander, *Tax Liens, Tax Sales, and Due Process*, 75 IND. L. J. 747, 751 (2000). Buyers at tax sale, or tax scavengers, typically seek properties where the amount of delinquent property taxes is a small percentage of the property's fair market value. *Id.* at 774. "Costs associated with notices, advertisements, and judicial proceedings are invariably included in the aggregate amount necessary to clear the delinquency, or redeem the property from a sale. It is precisely these high rates of return attract private investors to the potential purchase of tax liens." *Id.* at 777. Unlike the government, whose sole interest is the payment of taxes when it holds a tax lien, the private party's interest is in maximizing the return on its investment. *Id.* at 794. This was demonstrated when homeowners sued a consortium of tax buyers in Cook County, Illinois, alleging an antitrust conspiracy to drive up

bids (in the form of interest rates earned on taxes sold). During the year in question (1996), rates that had ranged for the past five years from 2% to 8% shot up to 15%. *Alexander v. Phoenix Bond & Indemnity Co.*, 149 F. Supp. 2d 989, 994 (N.D. Ill. 2001).

Actually notifying the interested parties of the pending loss of their property rights does not financially advantage tax scavengers (and tax purchasers). To the contrary, they only reap monetary benefit from their efforts if the owner is either *not* located or unable to pay the delinquent taxes. *See Slattery v. Friedman*, 636 A. 2d 1, 17-18 (Md. Ct. Spec. App. 1994) (recognizing that "the holder of the certificate of sale has little incentive to locate the owners of the property, and will often benefit if the owners are not located"). Consequently, the tax purchaser's counter-interest in providing notice may result in minimum efforts to locate accurate addresses of interested parties. *See also St. George Antiochian Orthodox Christian Church v. Aggarwal*, 603 A.2d 484, 490 (Md. 1990)(stating "we believe an interpretation that would permit a purchaser to engage in deliberate ignorance to the detriment of the owner's interest in the land would be at least constitutionally suspect"); *Kennedy v. Cummings*, 603 A.2d 1251 (Md. Ct. Spec. App. 1992); and *Scott v. Seek Lane Venture*, 605 A.2d 942, (Md. Ct. Spec. App.1992).

Thus, whether profit-motivated private parties engaged in property tax collection will rigidly adhere to constitutional due process obligations is uncertain. For this reason, in Ms. Lowe's case, and cases like hers, the Court must be especially demanding in its application of due process.

C. There are Large Numbers of Cases Similar to Ms. Lowe's

The issue raised in Ms. Lowe's petition has the potential to impact thousands of homeowners each year. While the particular (and particularly tragic) facts of Ms. Lowe's case may not be replicated on a daily basis, the general scenario of a homeowner's failure to receive notice, and the general question of what reasonable follow-up steps are required before taking away someone's home, are common.

Just in Cook County, Illinois, where this case arose, the public records (i.e., the highest case numbers of tax sale cases filed) indicate that a total of 118,423 properties were sold at annual tax sales, and a total of 28,448 were sold at biannual tax scavenger sales, for a total of 146,871 sales, for the period 2000 through 2005. This generates an annual average of 24,478 for all tax sales and an average of 19,737 for annual tax sales.

These numbers are consistent with the figures set forth in *Alexander* antitrust conspiracy case. In that case (which settled), the court found that the total number of annual tax sales held in Cook County, Illinois, for the period 1984 through 1996, was 290,451, for an annual average of 22,342. *Alexander*, 149 F. Supp. 2d at 994.

Moreover, for many thousands of these properties, the sold taxes were not redeemed prior to the point in the process where the tax purchaser had the right to file a petition for a tax deed. For the period 2002 through 2006, the public records (i.e., the highest case numbers of tax deed petitions filed) indicate that tax purchasers filed a total of 30,089 petitions, or 6,017 per year.

Finally, though many of these properties were subsequently redeemed, many of them were not. Specifically, for the period January 1, 2003, through July 31, 2007, the Office of the Cook County Clerk reports that

13,758 tax deeds were issued (for an annual average of over 3,000). In each such case, title was conveyed to the tax buyer. *See* Letter from Fredda Berman and accompanying documents, Office of Cook County Clerk (August 8, 2007) (attached hereto in Appendix A).

As indicated by the numerous preceding examples, issues in this case are vital to thousands of homeowners in Cook County and throughout the nation. When a person's home is at stake, the local government and the tax purchaser must provide notice calculated to reach the homeowner that reflects each case's specific circumstances. The Due Process Clause requires a level of care that respects this most important property interest.

CONCLUSION

For the foregoing reasons, as well as those set forth in the petition, certiorari should be granted.

Respectfully submitted,

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August 17, 2007

Office of the County Clerk

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August 8, 2007

Daniel P. Lindsay
Supervisory Attorney
Home Ownership Preservation Project
Legal Assistance Foundation of Metropolitan Chicago
111 West Jackson Boulevard—Suite 300
Chicago, IL 60604

Re: FOIA Request

Dear Mr. Lindsay:

Enclosed are documents provided pursuant to your FOIA request regarding tax deeds issued pursuant to court order during the period from January 1, 2003 through to July 31, 2007, the most recent information we have available.

As shown on the enclosed, tax deeds transferring 13,758 properties were issued during the period in question. The issuance date is the date of the court order directing the County Clerk to issue the deed, not the processing date.

I hope this information is helpful. I have waived the copying fee pursuant to your request.

Sincerely,

Fredda R. Berman
Director, Real Estate and Tax Services
Office of the Cook County Clerk

Enclosure

1	18340	414	20-04-408-038-0000	02CD1462	1/3/2003
2	18312	569	16-23-122-037-0000	02CD2011	1/3/2003
3	18311	025	28-03-201-020-0000	02CD834	1/3/2003
4	18311	025	28-03-201-021-0000	02CD834	1/3/2003
5	18311	025	28-03-201-022-0000	02CD834	1/3/2003
6	18316	025	28-03-201-023-0000	02CD962	1/3/2003
7	18313	014	32-18-311-012-0000	02CD815	1/3/2003
8	18310	014	32-19-406-032-0000	02CD816	1/3/2003
9	18315	014	32-19-415-002-0000	02CD1612	1/3/2003
10	18318	014	32-19-415-016-0000	02CD817	1/3/2003
11	18317	014	32-20-302-017-0000	02CD818	1/3/2003
12	18309	266	20-27-318-047-0000	02CD1517	1/6/2003
13	18302	165	16-16-121-006-0000	02CD2070	1/7/2003
14	18338	552	16-11-120-019-0000	02CD1758	1/7/2003
15	18342	552	16-11-131-023-0000	02CD1402	1/7/2003
16	18343	553	16-11-223-008-0000	02CD1404	1/7/2003
17	18347	557	16-13-204-005-0000	02CD470	1/7/2003
18	18331	496	17-04-221-006-0000	02CD1781	1/7/2003
19	18332	496	17-04-221-007-0000	02CD1782	1/7/2003
20	18320	377	19-01-420-055-0000	02CD810	1/7/2003
21	18303	251	20-03-108-021-0000	02CD2500	1/7/2003
22	18341	420	20-09-201-056-0000	02CD1509	1/7/2003
23	18316	350	20-22-408-013-0000	02CD636	1/7/2003
24	18301	268	20-34-117-012-0000	02CD954	1/7/2003
25	18305	224	30-17-202-010-0000	02CD2183	1/7/2003
26	18304	225	30-19-204-023-0000	02CD2182	1/7/2003
27	18314	014	32-19-311-019-0000	02CD1629	1/7/2003
28	18296	368	19-32-208-032-0000	01CD0362	1/9/2003
29	18351	252	20-03-305-006-0000	02CD424	1/9/2003
30	18351	252	20-03-303-007-0000	02CD424	1/9/2003
31	18363	554	16-11-409-029-0000	02CD1407	1/10/2003
32	18364	554	16-11-411-024-0000	02CD1406	1/10/2003

BEST AVAILABLE COPY

13728	30182	211	29-19-118-018-0000	06COTD3704	7/13/2007
13729	30182	211	29-19-119-001-0000	06COTD3704	7/13/2007
13730	30182	211	29-19-119-002-0000	06COTD3704	7/13/2007
13731	30183	211	29-19-119-012-0000	06COTD3696	7/13/2007
13732	30183	211	29-19-119-013-0000	06COTD3696	7/13/2007
13733	30183	211	29-19-119-014-0000	06COTD3696	7/13/2007
13734	30183	211	29-19-119-015-0000	06COTD3696	7/13/2007
13735	30183	211	29-19-119-016-0000	06COTD3696	7/13/2007
13736	30183	211	29-19-119-017-0000	06COTD3696	7/13/2007
13737	30183	211	29-19-119-018-0000	06COTD3696	7/13/2007
13738	30177	013	32-17-408-018-0000	06COTD0486	7/13/2007
13739	30176	016	32-23-122-005-0000	06COTD2334	7/13/2007
13740	30136	023	28-01-300-017-0000	06COTD3622	7/16/2007
13741	30202	466	28-20-103-029-0000	06COTD2528	7/17/2007
13742	30201	291	25-22-304-006-0000	05COTD0635	7/17/2007
13743	30208	197	29-06-416-030-0000	06COTD1455	7/17/2007
13744	30196	578	16-27-202-016-0000	06COTD2191	7/18/2007
13745	30200	501	17-10-219-027-1745	06COTD3597	7/18/2007
13746	30191	165	15-15-234-052-0000	06COTD0858	7/20/2007
13747	30191	165	15-15-234-053-0000	06COTD0858	7/20/2007
13748	30218	549	15-09-209-006-0000	06COTD1942	7/20/2007
13749	30219	553	16-11-310-001-0000	06COTD2484	7/20/2007
13750	30213	130	10-35-330-009-0000	06COTD2130	7/24/2007
13751	30214	155	15-04-204-016-0000	06COTD2127	7/24/2007
13752	30215	155	15-04-301-073-0000	06COTD2126	7/24/2007
13753	30210	546	16-04-412-024-0000	06COTD0591	7/24/2007
13754	30216	487	20-30-222-029-0000	06COTD2328	7/24/2007
13755	30209	481	25-17-318-010-0000	06COTD0689	7/24/2007
13756	30212	024	28-02-215-015-0000	06COTD0979	7/24/2007
13757	30217	194	29-03-202-016-0000	06COTD1048	7/24/2007
13758	30211	011	32-08-201-023-0000	05COTD2131	7/24/2007